

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

USA,

Plaintiff,

v.

JOHN EMMETT BROWN JR,

Defendant.

CASE NO. CR15-211-MJP

ORDER GRANTING DEFENDANT
BROWN'S MOTION FOR
ACQUITTAL AS TO COUNT 3 OF
THE INDICTMENT

THIS MATTER comes before the Court on Defendant John Emmett Brown's Motion and Memorandum for Judgment of Acquittal as to Count 3 of the Indictment. (Dkt. No. 203.)

Having considered the Parties' briefing and all related papers, the Court GRANTS the Motion.

Background

Defendant John Brown and Defendant Derrick Carter were tried by jury on one count of conspiracy to distribute cocaine, one count of possession of cocaine with intent to distribute, and one count of possession of a firearm in furtherance of a drug trafficking crime.

Trial commenced on June 27, 2016. On July 25, 2016, after about a day and a half of deliberations, the jury returned guilty verdicts as to both Defendants on counts one and two. The

1 jury failed to reach a verdict as to count three for either Defendant, declaring itself deadlocked.

2 The Court then declared a mistrial as to count three and discharged the jury.

3 Discussion

4 I. Legal Standard

5 To evaluate a motion for judgment of acquittal pursuant to Federal Rule of Criminal
6 Procedure 29, the Court must determine whether, viewing the evidence in the light most
7 favorable to the prosecution, any rational trier of fact could have found the essential elements of
8 the crime beyond a reasonable doubt. United States v. Nevils, 598 F.3d 1158, 1163-64 (9th Cir.
9 2010). This is a two-step inquiry. First, a reviewing court must consider the evidence presented
10 at trial in the light most favorable to the prosecution. Id. In so doing, the court “may not usurp
11 the role of the finder of fact by considering how it would have resolved the conflicts, made the
12 inferences, or considered the evidence at trial.” Id. Second, after viewing the evidence in the
13 light most favorable to the prosecution, the reviewing court must determine whether this
14 evidence, so viewed, is adequate to allow “any rational trier of fact [to find] the essential
15 elements of the crime beyond a reasonable doubt.” Id. (quoting Jackson v. Virginia, 443 U.S.
16 307, 319 (1979)). At the second step, a court must not ask itself whether it believes that the
17 evidence at the trial established guilt beyond a reasonable doubt, but only whether “any” rational
18 trier of fact could have made that finding. Id. Accordingly, the Court must only grant Mr.
19 Brown’s motion “if the evidence of innocence, or lack of evidence of guilt, is such that all
20 rational fact finders would have to conclude that the evidence of guilt fails to establish every
21 element of the crime beyond a reasonable doubt.” Id.

1 II. Defendant Brown's Motion

2 Defendant Brown was charged in count three with violation of 18 U.S.C. § 924(c). The
3 elements of the offense are that (1) the defendant committed a drug trafficking crime, (2) the
4 defendant knowingly possessed a firearm, and (3) the defendant possessed that firearm in
5 furtherance of the drug trafficking crime he committed. See Ninth Circuit Model Jury
6 Instruction 8.72. The Court instructed the jury, at the government's request, that it could also
7 convict Mr. Carter of count three under accomplice liability, see Rosemond v. United States, 134
8 S. Ct. 1240 (2014), and under co-conspirator liability, also known as Pinkerton v. United States,
9 328 U.S. 640 (1946), liability. Under co-conspirator liability, where a conspiracy exists, the act
10 of one co-conspirator is attributable to all co-conspirators if that act was in furtherance of the
11 conspiracy, fell within the scope of the conspiracy, and "could reasonably have been foreseen to
12 be a necessary or natural consequence" of the conspiracy, even if the co-conspirators are in fact
13 unaware of the act. United States v. Bingham, 653 F.3d 983, 997 (9th Cir. 2011).

14 Defendant Brown argues the government has failed to put forward sufficient evidence
15 that the Maadi Cadet 1 firearm charged in the indictment was possessed by any one of the co-
16 conspirators in furtherance of the drug smuggle. (Dkt. No. 203.) The government argues that a
17 rational trier of fact could have found that the Maadi was the firearm involved in the crime, and
18 that it was possessed in furtherance of a drug trafficking offense. (Dkt. No. 205.)

19 Viewing the evidence in the light most favorable to the prosecution, the Court finds that
20 no rational trier of fact could conclude that the elements of possession of a firearm in furtherance
21 of a drug trafficking crime are met beyond a reasonable doubt because no rational trier of fact
22 could conclude beyond a reasonable doubt that a member of the conspiracy possessed the Maadi
23 Cadet 1 charged in the indictment, specifically. The Maadi was found in the woods in Canada
24

1 under light leaf cover fourteen hours after co-conspirators Peal and Provo were arrested, and did
2 not have any fingerprints or DNA on it. Although the gun was found in the vicinity of a cell
3 phone belonging to co-conspirator Peale and the backpacks containing cocaine, the area is
4 known to be replete with smuggling routes used to illegally cross the United States-Canada
5 border. The gun appeared rusted as a result of either long exposure to the elements or lack of
6 proper upkeep. No witness's testimony links Brown, Carter, Provo, or Peal to the Maadi,
7 specifically. No witness reported seeing any of the conspirators in possession of the Maadi. No
8 witness reported that any member of the conspiracy ever spoke about the Maadi, or was present
9 when the Maadi was discussed. Mr. Brown testified that he was aware of a different firearm, and
10 the testimony of other witnesses also referenced a different firearm. At least one other firearm
11 was found in the same wooded area.

12 The government argues the location in the woods near the cocaine, cell phone, and other
13 items discarded by the smugglers, when combined with the fact that the gun and the cell phone
14 were covered with a similar amount of leaf cover, is sufficient. (Dkt. No. 205.) The Court
15 disagrees. This evidence, taken as a whole and drawing all inferences in favor of the
16 government, is insufficient for a rational fact finder to conclude beyond a reasonable doubt that
17 the Maadi, specifically, was constructively possessed by Brown or anyone else involved in the
18 conspiracy. And, without sufficient evidence that anyone in the conspiracy possessed the Maadi
19 charged in the indictment, Mr. Brown cannot be guilty of possessing the firearm as an
20 accomplice or as a co-conspirator. Accordingly, the Court GRANTS Mr. Brown's Motion for
21 Judgment of Acquittal as to count three of the indictment.

Conclusion

The Court GRANTS Defendant Brown's Motion for Judgment of Acquittal and DISMISSES count three of the indictment as to Mr. Brown with prejudice.

The clerk is ordered to provide copies of this order to all counsel.

Dated this 29th day of August, 2016.



Marsha J. Pechman
United States District Judge